

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 JANET B. ROBERTSON,) Case No. CV 17-00571-JDE
12)
13 Plaintiff,)
14 vs.) MEMORANDUM OPINION AND
15) ORDER
16 NANCY A. BERRYHILL,¹ Acting)
17 Commissioner of Social Security,)
18 Defendant.)
19 _____)

20 **I.**

21 **PROCEEDINGS**

22 Plaintiff Janet B. Robertson (“Plaintiff”) filed a complaint on January 24,
23 2017, seeking review of the denial of her application for Disability Insurance
24 Benefits (“DIB”) by the Commissioner of Social Security (“Commissioner”).
25 Pursuant to consents of the parties, the case has been assigned to the undersigned
26 Magistrate Judge for all purposes. (Dkt. Nos. 12-14.) Consistent with the Order

27 _____
28 ¹ Nancy A. Berryhill is now Acting Commissioner of Social Security (“Commissioner”
or “Defendant”) and is substituted in as defendant. See 42 U.S.C. 205(g).

1 Re: Procedures in Social Security Appeal (Dkt. No. 5), on September 29, 2017, the
2 parties filed a Joint Stipulation addressing their respective positions. (Dkt. No. 19
3 (“Jt. Stip.”).) The Court has taken the Joint Stipulation under submission without
4 oral argument and as such, this matter is now ready for decision.

5 II.

6 LEGAL STANDARD

7 A. Standard of Review

8 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision
9 denying benefits to determine whether it is free from legal error and supported by
10 substantial evidence in the record as a whole. Orn v. Astrue, 495 F.3d 625, 630
11 (9th Cir. 2007). “Substantial evidence” is “more than a mere scintilla but less than
12 a preponderance; it is such relevant evidence as a reasonable mind might accept as
13 adequate to support a conclusion.” Gutierrez v. Comm’r of Soc. Sec., 740 F.3d
14 519, 522-23 (9th Cir. 2014) (citations and internal punctuation omitted). The
15 standard of review of a decision by an Administrative Law Judge (“ALJ”) is
16 “highly deferential.” Rounds v. Comm’r Soc. Sec. Admin., 807 F.3d 996, 1002
17 (9th Cir. 2015) (citation omitted). Section 405(g) permits a court to enter a
18 judgment affirming, modifying, or reversing the Commissioner’s decision. 42
19 U.S.C. § 405(g). The reviewing court may also remand the matter to the Social
20 Security Administration (“SSA”) for further proceedings. Id.

21 “The ALJ is responsible for determining credibility, resolving conflicts in
22 medical testimony, and for resolving ambiguities.” Andrews v. Shalala, 53 F.3d
23 1035, 1039 (9th Cir. 1995). Although this Court cannot substitute its discretion for
24 the Commissioner’s, the Court nonetheless must review the record as a whole,
25 “weighing both the evidence that supports and the evidence that detracts from the
26 [Commissioner’s] conclusion.” Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th
27 Cir. 2007) (internal quotation marks and citation omitted). “Even when the
28

evidence is susceptible to more than one rational interpretation, we must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." Molina v. Astrue, 674 F.3d 1104, 1110 (9th Cir. 2012); see also Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (court will uphold Commissioner's decision when evidence is susceptible to more than one rational interpretation). However, the Court may only review the reasons provided by the ALJ in the disability determination, and may not affirm the ALJ on a ground upon which the ALJ did not rely. Garrison v. Colvin, 759 F.3d 995, 1010 (9th Cir. 2014) (citation omitted); see also Orn, 495 F.3d at 630 (citation omitted).

Lastly, even if an ALJ erred, a reviewing court will still uphold the decision if the error was inconsequential to the ultimate non-disability determination, or where, despite the error, the ALJ's path "may reasonably be discerned," even if the ALJ explained the decision "with less than ideal clarity." Brown-Hunter v. Colvin, 806 F.3d 487, 492 (9th Cir. 2015) (citations, internal punctuation omitted).

B. Standard for Determining Disability Benefits

When the claimant's case has proceeded to consideration by an ALJ, the ALJ conducts a five-step sequential evaluation to determine at each step if the claimant is or is not disabled. See Molina, 674 F.3d at 1110 (citing, inter alia, 20 C.F.R. §§ 404.1520(a), 416.920(a)). First, the ALJ considers whether the claimant currently performs "substantial gainful activity." Id. If not, the ALJ proceeds to a second step to determine if the claimant has a "severe" medically determinable physical or mental impairment or combination of impairments that has lasted for more than 12 months. Id. If so, the ALJ proceeds to a third step to determine if the claimant's impairments render the claimant disabled because they "meet or equal" any of the "listed impairments" set forth in the Social Security regulations. See Rounds, 807 F.3d at 1001. If the claimant's impairments do not meet or equal a "listed impairment," before proceeding to the fourth step, the ALJ assesses the

1 claimant's residual functional capacity ("RFC"), that is, what the claimant can do
2 on a sustained basis despite the limitations from her impairments. See 20 C.F.R.
3 §§ 404.1520(a)(4), 416.920(a)(4); Social Security Ruling ("SSR") 96-8p. After
4 determining the claimant's RFC, the ALJ proceeds to the fourth step and
5 determines whether the claimant has the RFC to perform her past relevant work,
6 either as she performed it when she worked in the past, or as that same job is
7 generally performed in the national economy. See Stacy v. Colvin, 825 F.3d 563,
8 569 (9th Cir. 2016) (citing, inter alia, SSR 82-61); see also 20 C.F.R.
9 §§ 404.1560(b), 416.960(b).

10 If the claimant cannot perform her past relevant work, the ALJ proceeds to a
11 fifth and final step to determine whether there is any other work, in light of the
12 claimant's RFC, age, education, and work experience, that the claimant can
13 perform and that exists in "significant numbers" in either the national or regional
14 economies. See 20 C.F.R. §§ 404.1520(g), 416.920(g); Tackett v. Apfel, 180 F.3d
15 1094, 1100-01 (9th Cir. 1999). If the claimant can do other work, she is not
16 disabled; if the claimant cannot do other work and meets the duration
17 requirement, the claimant is disabled. See Tackett, 180 F.3d at 1099 (citing 20
18 C.F.R. § 404.1560(b)(3)); see also 20 C.F.R. § 416.960(b)(3).

19 The claimant generally bears the burden at each of steps one through four to
20 show that she is disabled or that she meets the requirements to proceed to the next
21 step; the claimant bears the ultimate burden to show that she is disabled. See, e.g.,
22 Molina, 674 F.3d at 1110; Johnson v. Shalala, 60 F.3d 1428, 1432 (9th Cir. 1995).
23 However, at step five, the ALJ has a "limited" burden of production to identify
24 representative jobs that the claimant can perform and that exist in "significant"
25 numbers in the economy. See 20 C.F.R. §§ 404.1560(c)(1)-(2), 416.960(c)(1)-(2);
26 Hill v. Astrue, 698 F.3d 1153, 1161 (9th Cir. 2012); Tackett, 180 F.3d at 1100.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

BACKGROUND AND ADMINISTRATIVE PROCEEDINGS

Plaintiff was born on October 2, 1956. (Administrative Record (“AR”) 68.) On March 6, 2014, Plaintiff filed a Title II application for DIB benefits claiming disability beginning January 13, 2014. (AR 24, 67.) After her application was denied initially and upon reconsideration (AR 104-19, 121-34), Plaintiff requested an administrative hearing. (AR 151-54.) Plaintiff, represented by counsel, appeared and testified at the hearing before the ALJ on August 27, 2015. (AR 64-103.)

On September 25, 2015, the ALJ returned an unfavorable decision. (AR 21-37.) At step one of the sequential evaluation, the ALJ found no substantial gainful activity since the alleged onset date. (AR 26.) At step two, the ALJ determined that Plaintiff had the following severe impairments: “disc disease of the cervical spine, status post-surgery; disc disease of the lumbar spine, status post-surgery; osteoarthritis of the left knee; history of bilateral carpal tunnel syndrome, status post right thumb surgery; and asthma.” (*Id.*) At step three, the ALJ found that none of these impairments or combination of impairments met or equaled a listed impairment. (AR 28.) Next, the ALJ found that Plaintiff had the RFC to perform a range of light work, further limited as follows (AR 28):

The [Plaintiff] can lift and/or carry 20 pounds occasionally and 10 pounds frequently; she can stand and/or walk for six hours out of an eight-hour workday; she can sit for six hours out of an eight-hour workday; she can perform frequent pushing and pulling with the upper extremities; she cannot climb ladders, rope, or scaffolds; she can occasionally climb ramps and stairs; she cannot crawl; she can occasionally balance, stoop, kneel, and crouch; she cannot perform overhead reaching bilaterally; she can perform all other reaching frequently; she can perform frequent handling, fingering,

1 and feeling bilaterally; the [Plaintiff] should avoid all exposure to
2 vibration and hazards; and she should avoid concentrated
3 exposure to fumes, odors, dusts, gases, and poor ventilation.

4 At step four, the ALJ found that Plaintiff was able to perform her past
5 relevant work as: a medical records clerk (Dictionary of Occupational Titles
6 (“DOT”) 079.262-014); receptionist (DOT 237.367-038); and insurance specialist
7 (DOT 079.262-010) as she actually performed it and as generally performed in the
8 national economy. (AR 31-2.) As a result, the ALJ concluded that Plaintiff was
9 not disabled from the alleged onset date through the date of the decision. (AR 24.)

10 On October 19, 2015, Plaintiff filed a request with the Appeals Council for
11 review of the ALJ’s decision. (AR 16-20.) On December 15, 2016, the Appeals
12 Council denied Plaintiff’s request for review, making the ALJ’s decision the
13 Commissioner’s final decision. (AR 1-7.) Plaintiff then commenced this action.

14 IV.

15 DISCUSSION

16 The parties present three disputed issues (Jt. Stip. at 2-3.):

17 Issue No. 1: The ALJ erred in failing to set forth requisite clear and
18 convincing reasons for rejecting the opinion of treating source Dr. Massoudi

19 Issue No. 2: The ALJ erred in failing to properly evaluate Plaintiff’s
20 subjective complaints and credibility.

21 Issue No. 3: The ALJ erred in finding Plaintiff retains the RFC to perform
22 sedentary work and could return to work as a Medical Records Clerk.

23 The Court finds that the ALJ’s reasoning and application of law were sound.

24 A. Evaluation of Medical Testimony

25 Plaintiff argues that the ALJ committed reversible error in failing to set forth
26 clear and convincing reasons for rejecting the opinion of her treating physician,
27 Dr. Massoudi. (Id. at 3.) The Commissioner argues that the ALJ properly
28

discounted Dr. Massoudi's opinions because they were not supported by evidence, including Plaintiff's own subjective symptom testimony, the opinions of non-examining state agency physicians, and other medical evidence. (Id. at 5-7.)

1. Applicable Law

Three types of doctors may offer opinions in Social Security cases: (1) those who treated the plaintiff; (2) those who examined but did not treat the plaintiff; and (3) those who did neither. Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). Treating doctors' opinions are generally given more weight than those of examining doctors, and examining doctors' opinions generally receive more weight than those of non-examining doctors. Id. Treating doctors' opinions receive greater weight because they are employed to cure and have more opportunity to know and observe patients as individuals. See Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989). "The treating physician's opinion is not, however, necessarily conclusive as to either a physical condition or the ultimate issue of disability." Id. "The ALJ may disregard the treating physician's opinion whether or not that opinion is contradicted." Id. An "ALJ need not accept the opinion of any physician . . . if that opinion is brief, conclusory, and inadequately supported by clinical findings." Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219, 1228 (9th Cir. 2009); Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001). To reject the un-contradicted opinion of a treating doctor, the ALJ must provide "clear and convincing reasons that are supported by substantial evidence." Bayliss v. Barhnart, 427 F.3d 1211, 1216 (9th Cir. 2005). Where a treating doctor's opinion is contradicted, the "ALJ may only reject it by providing specific and legitimate reasons that are supported by substantial evidence." Id.

An ALJ need not recite "magic words" to reject a treating physician's opinion; the court may draw "specific and legitimate inferences" from the ALJ's opinion. Magallanes, 881 F.2d at 755. "[I]n interpreting the evidence and

1 developing the record, the ALJ does not need to ‘discuss every piece of evidence.’”
2 Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003) (quoting
3 Black v. Apfel, 143 F.3d 383, 386 (8th Cir. 1998)).

4 **2. Analysis**

5 Plaintiff contends that the ALJ erred in giving significant weight to non-
6 examining, state agency, physicians and ascribing little weight to the opinion of
7 Plaintiff’s treating physician, Dr. Massoudi. (Jt. Stip. at 3-4.) Dr. Massoudi had
8 provided Plaintiff with a completed exertional questionnaire that limited Plaintiff
9 to: walking, standing, or sitting for no more than thirty minutes at a time during an
10 eight-hour day; lifting or carrying items no more than 15 pounds; pushing or
11 pulling items no more than 10 pounds; and never bending or reaching. (AR 769.)
12 Dr. Massoudi further opined that Plaintiff did not have the capacity to work, nor
13 would she ever regain that capacity. (Id.) In contrast, the non-examining, state
14 agency physicians concluded that Plaintiff could perform light work with less
15 stringent limitations. (AR 114-19, 129-34.) The ALJ found that the state agency
16 physicians’ opinions were well-supported by the evidence, while ascribing low
17 weight to Dr. Massoudi’s opinion for the lack of support in the objective evidence
18 for his conclusions.² (AR 31.) As the ultimate opinion of Plaintiff’s treating
19 physician was contradicted, the standard governing whether the ALJ appropriately
20 rejected Dr. Massoudi’s opinion requires the presentation of specific, legitimate
21 reasons supported by substantial evidence. Bayliss, 427 F.3d at 1216.

22 In assessing Dr. Massoudi’s opinion, the ALJ found that the conclusions did
23 not correlate well with the other evidence in the record. (AR 31.) For example, he
24 noted that Dr. Massoudi claimed Plaintiff was incapable of overhead reaching (id.
25 at 769), but during the hearing Plaintiff stated that, while difficult, she was able to
26

27 ² The Court analyzes in greater detail the ALJ’s decision to adopt the findings of the state
28 agency non-examining physicians below.

1 reach overhead for limited periods of time. (AR 88.) The ALJ also concluded that
2 Dr. Massoudi's opinion was less than persuasive given his limited relationship with
3 Plaintiff, noting that he saw Plaintiff only as her cervical spine surgeon. (AR 31,
4 363-386.) Though Plaintiff argues that the ALJ is incorrect in characterizing the
5 treatment relationship between her and Dr. Massoudi as limited (Jt. Stip. at 9), this
6 is belied by her testimony at the hearing. When asked at the hearing by the ALJ
7 whether she received treatment from Dr. Massoudi, Plaintiff explained, "I do not
8 see him. He was the surgeon for my neck [a]nd I'm done with him." (AR 82.)
9 Within the same line of questioning, Plaintiff listed two other physicians as
10 treating her for primary care and for pain. (See AR 83.) Finally, the ALJ notes that
11 the limitations set forth in Dr. Massoudi's opinion were disproportionate to the
12 diagnostic evidence, citing that imaging records subsequent to Plaintiff's spine
13 surgeries demonstrate only mild musculoskeletal pathology. (AR 30, 31, 368, 370,
14 371, 385, 386, 387, 395, 397.) Plaintiff primarily offers her own subjective
15 symptom testimony to bolster Dr. Massoudi's opinion. (See Jt. Stip. at 3-4, 7.)
16 However, as the Court notes below, the ALJ appropriately discounted Plaintiff's
17 subjective symptoms testimony.

18 In addition, Plaintiff asserts that she underwent a right-sided L5-S1
19 transforaminal epidural steroid injection, arguing that course of treatment indicate
20 the severity of her condition. (AR 794.) District courts in this Circuit have not
21 followed a consistent path regarding whether epidural steroid injections constitute
22 conservative treatment. Compare Samaniego v. Astrue, 2012 WL 254030, at *12-
23 13 (C.D. Cal. Jan. 27, 2012) (finding treatment with steroid and epidural injections
24 not conservative), with Lederle v. Astrue, 2011 WL 839346, at *23 (E.D. Cal. Feb.
25 17, 2011) (characterizing epidural steroid injections as conservative treatment); see
26 also Lapeirre-Gutt v. Astrue, 382 F. App'x 662, 664 (9th Cir. 2010) (assuming but
27 not deciding powerful pain medications and injections can "constitute
28

conservative treatment”) (quotations omitted). However, the Court need not make a determination related to whether, in the instant case, such injections constitute conservative treatment as Dr. Massoudi’s own opinion indicates that Plaintiff’s treatment program has been conservative. (AR 770, 772.) Further, “[i]mpairments that can be controlled effectively with medication are not disabling for the purpose of determining eligibility for SSI benefits.” Warre v. Comm’r of the SSA, 439 F.3d 1001, 1006 (9th Cir. 2006). Plaintiff’s treatment with epidural steroid injections does not preclude the ALJ from discounting Dr. Massoudi’s opinion.

ALJs may properly reject the contradicted opinion of a treating physician by providing specific and legitimate reasons supported by substantial evidence, Bayliss, 427 F.3d at 1216. Further, an ALJ may appropriately discount an opinion of a treating physician if he “provide[s] nothing more than a statement of his unsupported opinion.” Burkhart v. Bowen, 856 F.2d 1335, 1339 (9th Cir. 1988). With respect to Dr. Massoudi’s opinion, “[t]here was no description – either subjective or objective – of medical findings, personal observations or test reports upon which [the treating physician] could have arrived at his conclusion.” Id. In his ultimate conclusions of disability, Dr. Massoudi provides nothing more than a statement of unsupported opinion through a series of checks on a boilerplate form. In visits with Plaintiff in June and July of 2014, Dr. Massoudi’s examinations yielded no acute findings. (See AR 773-75.)

The Court finds that the ALJ provided specific and legitimate (and clear and convincing) reasons that are supported by substantial evidence to support his decision to give low weight to the opinion of Dr. Massoudi.

B. Adverse Credibility Determination

Plaintiff argues that the ALJ’s assessment of Plaintiff’s credibility is not supported by substantial evidence. (Jt. Stip. at 3.) Plaintiff argues, specifically, that the ALJ erred in failing to provide a clear and convincing rationale for discrediting

1 Plaintiff's subjective testimony. (Id. at 8.) Further, Plaintiff asserts that the
2 evidence as a whole clearly supports a finding that the Plaintiff's condition was
3 severe, particularly in light of Dr. Massoudi's opinion. (Id. at 9.)

4 The Commissioner argues that the ALJ relied upon a number of factors in
5 his evaluation of Plaintiff's subjective symptom testimony – including objective
6 medical evidence, treatment notes, and inconsistencies between her claims and
7 activities – and that he provided clear and convincing reasons based on substantial
8 evidence to discount Plaintiff's subjective symptom testimony. (Id. at 14.)

9 **1. Applicable Law**

10 The ALJ must make two findings before the ALJ can find a claimant's pain
11 or symptom testimony is not credible. See Treichler v. Comm'r of Soc. Sec.
12 Admin., 775 F.3d 1090, 1102 (9th Cir. 2014) (citing 42 U.S.C. § 423(d)(5)(A)).
13 First, the ALJ must determine whether the claimant has presented objective
14 medical evidence of an underlying impairment “which could reasonably be
15 expected to produce the pain or other symptoms alleged.” Id. As long as the
16 plaintiff offers evidence of a medical impairment that could reasonably be
17 expected to produce pain, the ALJ may not require the degree of pain to be
18 corroborated by objective medical evidence. See Bunnell v. Sullivan, 947 F.2d 341,
19 346-47 (9th Cir. 1991). Second, if the claimant has produced such evidence, and
20 the ALJ has not determined that the claimant is malingering, the ALJ must
21 provide “specific, clear and convincing reasons for rejecting the claimant's
22 testimony regarding the severity of the claimant's symptoms.” Treichler, 775 F.3d
23 at 1102 (citing Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir. 1996)).

24 An ALJ's assessment of credibility should normally be given great weight,
25 and where an ALJ's credibility finding is supported by substantial evidence, a
26 reviewing court may not engage in second-guessing. See Thomas v. Barnhart, 278
27 F.3d 947, 959 (9th Cir. 2002); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985).

1 Furthermore, “[a]n ALJ cannot be required to believe every allegation of disabling
2 pain, or else disability benefits would be available for the asking . . .” Fair v.
3 Bowen, 885 F.2d 597, 603 (9th Cir. 1989) (citing 42 U.S.C. § 423(d)(5)).

4 When analyzing a claimant’s subjective symptoms, the ALJ may consider
5 factors relevant to the symptoms such as, inter alia, the claimant’s daily activities;
6 precipitating and aggravating factors; the type, dosage, effectiveness and side
7 effects of medication; treatment, other than medication, that the claimant receives
8 or has received for relief of pain or other symptoms; or any other measures that
9 the claimant has used to relieve pain or symptoms. See 20 C.F.R. § 404.1529.

10 The ALJ may employ “ordinary techniques of credibility evaluation,” such
11 as prior inconsistent statements concerning symptoms, testimony that appears less
12 than candid, or an unexplained or inadequately explained failure to seek treatment
13 or follow a prescribed course of treatment, in assessing a claimant’s credibility. See
14 Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir. 2008) (citations omitted); see
15 also Thomas, 278 F.3d at 958-59 (in analyzing credibility of claimant’s pain
16 complaints, ALJ may consider reputation for truthfulness, inconsistencies between
17 testimony and conduct, work record); Fair, 885 F.2d at 603 (in analyzing
18 claimant’s pain, ALJ may consider evidence of daily activities, inadequately
19 explained failure to seek treatment or follow prescribed treatment). In addition, the
20 ALJ may consider testimony from physicians and third parties concerning the
21 nature, severity, and effect of the symptoms about which the claimant complains.
22 See Thomas, 278 F.3d at 958-59 (citing Light v. Soc. Sec. Admin., 119 F.3d 789,
23 792 (9th Cir. 1997)).

24 However, once a claimant presents medical evidence of an underlying
25 impairment, the ALJ may not discredit testimony regarding subjective pain and
26 other symptoms merely because the symptoms, as opposed to the impairments, are
27 unsupported by objective medical evidence. Lingenfelter, 504 F.3d at 1035-36; see
28

1 also Bunnell, 947 F.2d at 346-47. Nevertheless, “[w]hile subjective pain testimony
2 cannot be rejected on the sole ground that it is not fully corroborated by objective
3 medical evidence, the medical evidence is still a relevant factor in determining the
4 severity of the claimant's pain and its disabling effects.” Rollins v. Massanari, 261
5 F.3d 853, 857 (9th Cir. 2001) (citing 20 C.F.R. § 404.1529(c)(2)).

6 On March 28, 2016, after the ALJ’s assessment in this case, SSR 16-3p went
7 into effect. See SSR 16-3p, 2016 WL 1119029 (Mar. 16, 2016). SSR 16-3p provides
8 that “we are eliminating the use of the term ‘credibility’ from our sub-regulatory
9 policy, as our regulations do not use this term.” Id. Moreover, “[i]n doing so, we
10 clarify that subjective symptom evaluation is not an examination of an individual’s
11 character” and requires that the ALJ consider all of the evidence in an individual’s
12 record when evaluating the intensity and persistence of symptoms. Id.; see also
13 Trevizo v. Berryhill, 871 F.3d 664, 678 n.5 (9th Cir. 2017). Thus, the adjudicator
14 “will not assess an individual’s overall character or truthfulness in the manner
15 typically used during an adversarial court litigation. The focus of the evaluation of
16 an individual’s symptoms should not be to determine whether he or she is a
17 truthful person.” SSR 16-3p, 2016 WL 1119029, at *10 (Mar. 16, 2016).

18 **2. Analysis**

19 The ALJ found that the record demonstrated that the claimant had physical
20 and mental limitations that could reasonably produce Plaintiff’s alleged pain and
21 other symptoms. (AR 29.) However, after considering the evidence in the record,
22 the ALJ found that Plaintiff’s allegations concerning the intensity, persistence and
23 limiting effects of her symptoms were partially credible and Plaintiff’s allegations
24 of disabling symptoms as a whole were not fully credible to the extent they
25 suggested limitations greater than those in the record. (Id.)

26 Specifically, the ALJ noted that Plaintiff is capable of independent activities
27 of daily living despite her alleged conditions. (Id.) Plaintiff testified that she was
28

1 able to perform the following activities without any assistive devices: shop for
2 groceries, including lifting a gallon of milk and light grocery bags; walk about a
3 half a mile; drive a car; and do household chores, such as dusting, doing dishes,
4 and cleaning the bathroom. (Id.) While it is true that a finding of disability “does
5 not mean that a claimant must vegetate in a dark room excluded from all forms of
6 human and social activity,” Cooper v. Bowen, 815 F.2d 557, 561 (9th Cir. 1987)
7 (citations omitted), an “ALJ can discredit a claimant’s testimony when the
8 claimant reports participation in everyday activities indicating capacities that are
9 transferable to a work setting.” Molina, 674 F.3d at 1113 (citations omitted). Here,
10 the ALJ found that Plaintiff’s daily activities belied her allegations of disabling
11 pain, as they evidenced a clear ability to perform functions required from her
12 previous work. (AR 29.) This finding is supported by substantial evidence in the
13 record, including: Plaintiff’s testimony; notes from the state agency non-examining
14 physicians; and the treatment notes of examining physicians Plaintiff visited. (AR
15 87, 88, 90, 109, 115, 198-200.)

16 The ALJ further supported his finding that Plaintiff’s subjective symptoms
17 were disproportionate to the evidence in the record by citing several medical
18 records indicating Plaintiff’s issues related to her neck and back pain had been
19 addressed and were well-managed. After issues following a surgery for Plaintiff’s
20 degenerative disc disease, the ALJ noted that Plaintiff reported that her pain was
21 well-controlled with medication and two epidural injections, and Plaintiff stated
22 that the radiculopathy that she felt in her lower right extremity was “an acceptable
23 level of pain for her.” (AR 30, 796.) This occurred October 30, 2014, after the
24 alleged onset of disability. (AR 796.) The ALJ also noted that in a recent medical
25 visit related to pain associated with her back and neck that Plaintiff continued to
26 manage her pain with medication. (AR 30,798, 806.) While true that the pain
27 management specialists diagnosed chronic pain syndrome, failed lumbar back
28

1 surgery syndrome, and lumbar radiculopathy, the physicians did not recommend
2 further surgical intervention or additional diagnostic imaging for Plaintiff's neck or
3 back problems. (Id.) Additionally, the diagnosis was done on October 30, 2014,
4 the same day that Plaintiff indicated the pain was not disabling. (See AR 796.)

5 While Plaintiff argues that she suffers from disabling pain (Jt. Stip. at 17)
6 and that she was complaining of increased radiating pain in the early part of 2014
7 (AR 9), she also made several visits to pain specialists during the same time period
8 where Plaintiff complained of moderate pain at a level of 2/10. (AR 796, 804, 807,
9 811.) Plaintiff received information about spinal cord simulation therapy to help
10 manage the pain, but Plaintiff decided she did not wish to move forward with that
11 treatment. (AR 808, 809.) The ALJ also found no evidence of diagnostic notes or
12 treatment related to Plaintiff's allegations of pain related to manipulation
13 emanating from bilateral carpal tunnel release. (AR 30, 108.) Plaintiff does not
14 contest this conclusion. (See Jt. Stip. at 8-9, 12.)

15 The Court finds that the ALJ provided specific, clear, and convincing
16 reasons for discounting Plaintiff's testimony regarding the severity of her
17 subjective symptoms, linking specific parts of the record to specific allegations of
18 pain to support his assessment. (AR 30-32.) The ALJ did not err in his evaluation
19 of Plaintiff's subjective symptom testimony.

20 **C. RFC**

21 Plaintiff argues that the ALJ failed to comply with applicable law in finding
22 that Plaintiff retained the RFC to perform sedentary work and that she could
23 return to work as a medical records clerk. (Jt. Stip. at 3.) She argues, specifically,
24 that the ALJ should have taken into consideration Plaintiff's back and knee pain
25 as well as associated postural limitations. (Id. at 16-17.) She also maintains that
26 the ALJ erred in finding that her mental impairments were not severe at step 2 of
27 his disability evaluation. (Id. at 17.) Further, she argues that the ALJ's reliance on
28

1 the state agency physicians was “misplaced.” (Id. at 19.) The Commissioner
2 asserts that Plaintiff maintained the ability to perform at a light exertional level
3 with restrictions in performing postural and manipulative activities, which was
4 supported through medical evidence and the opinion of state agency reviewing
5 physicians. (Id. at 18.)

6 **1. Applicable Law**

7 The ALJ is responsible for assessing a claimant’s RFC. 20 CFR §
8 404.1546(c). “The ALJ assesses a claimant’s RFC based on all relevant evidence in
9 the case record.” Laborin v. Berryhill, 867 F.3d 1151, 1153 (9th Cir. 2017)
10 (citations omitted). “The RFC assessment must ‘[c]ontain a thorough discussion
11 and analysis of the objective medical evidence and other evidence, including the
12 individual’s complaints of pain and other symptoms and the adjudicator’s personal
13 observations if appropriate.” Id.; see also SSR 96-8p, 1996 SSR LEXIS 5, at *14
14 (“In assessing RFC, the adjudicator must consider limitations and restrictions
15 imposed by all of an individual’s impairments, even those that are not ‘severe.’”).

16 **2. Analysis**

17 Plaintiff argues that the ALJ was simply wrong in assessing her physical
18 condition. (Jt. Stip. at 19.) Plaintiff contends that in August of 2014, she was in
19 severe pain and receiving pain management; she was also diagnosed with failed
20 lumbar back surgery, chronic pain syndrome, and lumbar radiculopathy. (AR 776,
21 778.) Plaintiff also re-raises the fact that she received an epidural steroid injection
22 in August of 2014. (Jt. Stip. at 17.)

23 In assessing an RFC, the ALJ considers those limitations supported by the
24 record and need not take into account properly rejected evidence. See Bayliss, 427
25 F.3d at 1217 (upholding ALJ’s RFC because “the ALJ took into account those
26 limitations for which there was record support that did not depend on [claimant]’s
27 subjective complaints”); Batson v. Comm’r of Soc. Sec. Admin., 359 F.3d 1190,
28

1 1197 (9th Cir. 2004) (ALJ not required to incorporate into RFC findings from
2 physician opinions that were “permissibly discounted”).

3 The Court has already found that the ALJ properly discounted Plaintiff’s
4 subjective symptom testimony and appropriately ascribed low weight to Dr.
5 Massoudi’s opinion. Plaintiff’s reliance on these, therefore, is unavailing. Though
6 Plaintiff seems to challenge the ALJ’s finding that Plaintiff’s mental impairments
7 were not severe, she does not cite to any evidence in the record supporting a
8 contrary finding, and the Court’s independent review of the record finds none.

9 With respect to the ALJ’s reliance upon opinions of non-examining state
10 agency physicians, an ALJ may consider findings by state-agency medical
11 consultants. 20 C.F.R. § 404.1527(e). The Court finds that the ALJ properly relied
12 on the state agency physicians as part of his basis to find Plaintiff capable of
13 performing light work with certain limitations. (AR 31.) “The ALJ must consider
14 all medical opinion evidence.” Tommasetti, 533 F.3d at 1041. Generally, the most
15 weight is given to the opinion of a treating physician and the least weight is given
16 to the opinion of a non-examining physician. See Lester, 81 F.3d at 830. The
17 opinions of non-examining physicians may “serve as substantial evidence when
18 [they] are consistent with the independent clinical findings or other evidence in the
19 record.” Thomas, 278 F.3d at 957.

20 In making its conclusions, the state agency physicians reviewed the
21 treatment notes of several of Plaintiff’s physicians, including Dr. Massoudi. (AR
22 109-13, 126-28.) The state agency physicians reviewed the treatment records of Dr.
23 Betts, who noted in February of 2013 that Plaintiff was well-developed and in no
24 acute distress, apart from mild to moderate musculoskeletal discomfort. (AR 290.)
25 Plaintiff had full motor strength in both lower extremities, but some tenderness in
26 her back. (Id.) She was counseled to take a steroid injection for the allegations of
27 pain in her lower back and right posterior thigh. (Id.) In March of 2013, Plaintiff
28

1 reported feeling significantly better after the epidural injection, and the pain
2 associated with her lower back and leg was reported as a 1 on a 10-point scale and
3 the pain did not limit activities. (AR 329.) A month prior she had told Dr.
4 Johnson, an orthopedic specialist, that the back pain was as low as 3/10 and
5 sometimes as high as 6/10. (AR 336.) In August and September 2013, Plaintiff
6 visited Dr. Johnson presenting for a follow-up for neck pain located in the cervical
7 spine (AR 319, 323.) Each time the physical exam was unremarkable, with
8 Plaintiff exhibiting 5/5 motor strength in examinations of her upper and lower
9 extremities. (AR 320-21, 324-35.) The neurological examination was also
10 unremarkable each time. (AR 325-26.)

11 In November 2013, and in response to persistent symptoms of neck pain,
12 Dr. Massoudi recommended cervical spine surgery for Plaintiff, which was
13 performed in January 2014. (AR 365-66, 374, 402.) In March 2014, subsequent to
14 Plaintiff's cervical spine surgery, Dr. Massoudi wrote that Plaintiff reported
15 complete resolution of her preoperative symptoms of cervical pain and significant
16 improvements in her symptoms of neck pain and stiffness, though Plaintiff
17 continued to allege pain associated with her lower back and radiating pain to the
18 right lower extremity. (AR 363, 364.) He made the same conclusions during a post-
19 operative follow-up in July of 2014 while also noting Plaintiff's complaints of
20 lower back and hip pain, as well as numbness in both feet. (AR 773.) Plaintiff
21 submitted to epidural steroid injections with Dr. Small in early October 2014 to
22 address the pain, but Plaintiff terminated the procedure. (AR 795.)

23 In late October 2014, after the alleged onset of disability, Plaintiff visited Dr.
24 Small and reported that she had been taking gabapentin and tramadol for pain
25 management and felt that her pain was well-controlled with complaints of 2/10
26 pain in her lower back and hip. (AR 796.) Plaintiff reported that the level of pain
27 was acceptable to her. (*Id.*) In January 2015, Plaintiff re-visited Dr. Small and
28

1 reported the same low levels of pain in her lower back and radiating down her
2 right leg. (AR 804.) During this visit, Dr. Small noted that Plaintiff's gait was non-
3 antalgic with paralumbar tenderness in the back, but no midline spinal tenderness
4 or parathoracic tenderness. (AR 806.) Range of motion for the hamstring was
5 restricted along with a limited range of motion related to the adductor. (Id.) The
6 findings of the neurological examination were unremarkable; strength and
7 sensation was intact and lower extremity deep tendon reflexes were normal and
8 symmetric. (Id.) Dr. Small recommended Plaintiff engage in a spinal cord
9 simulator trial, which Plaintiff refused. (AR 808, 809.)

10 After reviewing these records, the state agency physicians concluded that
11 Plaintiff suffered from medically determinable impairments, including spine
12 disorders, dysfunction with major joints, and asthma. (AR 114.) Notwithstanding
13 these impairments, the physicians found Plaintiff was capable of performing her
14 past work with the following limitations: occasionally lifting of carrying 20
15 pounds; frequently lifting or carrying 10 pounds; standing or walking for a total of
16 6 hours in an 8-hour workday; sitting for a total of 6 hours in an 8-hour workday.
17 (AR 115.) In addition, they recommended Plaintiff could climb stairs or ramps
18 occasionally; never climb ladders, ropes, or scaffolds; kneel occasionally; crouch
19 occasionally; and never crawl. (Id.) They further recommended postural
20 limitations of no overhead reaching (so as not to extend neck, but otherwise
21 Plaintiff could reach, handle, finger, and feel frequently. (AR 117.) At the hearing,
22 the ALJ posed several different hypothetical questions to the VE. (AR 93-102.)
23 Among them, he adopted the RFC recommended by the state agency non-
24 examining physicians, and the VE found that Plaintiff would still be capable of
25 performing her previous work as a medical records clerk, receptionist, and
26 insurance specialist. (AR 92-95.)

27 The ALJ's RFC assessment was supported by substantial evidence.
28


V.

CONCLUSION AND ORDER

The Commissioner's decision denying Plaintiff's application for DIB benefits was supported by substantial evidence in the record. Accordingly, Consistent with the foregoing, IT IS ORDERED that that the decision of the Commissioner of Social Security is AFFIRMED.

IT IS FURTHER ORDERED that the Clerk serve copies of this Order and Judgment on the counsel for both parties.

DATED: November 21, 2017



JOHN D. EARLY
United States Magistrate Judge